

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1481 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVBHAI @ RAJESH BECHARJI THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

MR AM PAREKH for CHETAN B RAVAL for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on August 3, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Baldevbhai @ Rajesh Becharji Thakor, under the provisions of the PASA Act.

#. The detaining authority observed in the grounds of detention that the activities of the detainee are that of a dangerous person. As many as seven offences are registered against the detainee and there are statements of two witnesses, whose identity has not been disclosed in exercise of powers under section 9(2) of the PASA Act. The detaining authority considered the possibility of resorting to less drastic remedies and ultimately came to a conclusion that the detainee is required to be detained under the PASA Act in order to immediately preventing him from pursuing his illegal and anti-social activities.

#. The detainee has challenged the order of detention on various grounds. However, Mr. A.M. Parekh, learned advocate appearing for Mr. C.B. Raval for the petitioner has restricted his argument to the ground of improper exercise of powers under section 9(2) of the PASA Act. He submitted that the statements of anonymous witnesses have been verified by the detaining authority on August 3, 1999 and on that very day, the order is passed.

3.1 He submitted further that so far as the offences registered against the detainee are concerned, they relate to theft and they do not relate to disturbance to public order. The subjective satisfaction of the detaining authority about the activities of the detainee being detrimental to public order and the detainee being a dangerous person, therefore, cannot be considered as genuine. He therefore, urged that the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Considering rival side contentions, it may be noted that the statements of anonymous witnesses have been recorded by the sponsoring authority on July 26, 1999 and July 29, 1999. The statements have been verified by the detaining authority on August 3, 1999 and the order is passed on that very day.

#. So far as the statements of anonymous witnesses are

concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses in the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detainee while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detainee of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. Adverting to the offences registered against the detainee, a perusal of the First Information Report and the other relevant documents supplied to the detainee makes it abundantly clear that there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detainee being detrimental to public order is without any basis. Neither the statements nor the registered offences can be accepted to form the basis of this satisfaction.

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences, while passing the order of detention cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated August 3, 1999 is hereby quashed and set aside. The detainee - Baldevbhai @ Rajesh Becharji Thakor is ordered to be set at liberty forthwith, if not

required in any other matter. Rule is made absolute with
no order as to costs.

[A.L. DAVE, J.]

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